

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

FEB 21 2002

Derrick Griffin, 00649164

F.C.I. Pekin

Box 5000

Pekin, Illinois

(Enter your full name, prison number
and address)

CASE NUMBER 1:02CV00334

JUDGE: Henry H. Kennedy

DECK TYPE: FOIA/Privacy Act

DATE STAMP: 02/21/2002

v.

John Ashcroft, Att. Gen.

Kathleen H. Sawyer, Dir.

B.G. Compton, Warden

Ralph Miller, U. Manager

(Enter the full name and address(es),
if known, of defendant(s) in this
action)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

Instructions for filing a Complaint by a Prisoner
Under the Civil Rights Act, 42 U.S.C. §1983

This packet contains one copy of a complaint form and one copy of an application to proceed *in forma pauperis*. To start an action, you must file an original and one copy of this complaint form.

Your complaint must be clearly handwritten or typewritten and you must sign and declare under penalty of perjury that the facts are correct. If you need additional space to answer a question, you may use another blank page.

Your complaint can be brought in this Court only if one or more of the named defendants is located within the District of Columbia. Further, you must file a separate complaint for each claim that you have unless they are related to the same incident or problem. The law requires that you state only facts in your complaint.

You must supply a certified copy of your prison trust account, pursuant to the provisions of 28 U.S.C. §1915, effective April 26, 1996. The filing fee is \$150.00.. If insufficient funds exist in your prison account at the time of filing your complaint, the court must assess, and when funds exist, collect an initial filing fee equal to 20 percent of the greater of:

- (1) the average monthly deposits to your prison account, or
- (2) the average monthly balance of your prison account for the prior six-month period.

Thereafter, you are required to make monthly payments of 20% of the preceding month's income. The agency having custody over you must forward payments from your account to the clerk of the court each time the amount in the account exceeds \$10.00 until the filing fees are paid.

Therefore, before an assessment can be made regarding your ability to pay, you must submit a certified copy of your prison account for the prior six-month period.

When this form is completed, mail it and the copies to the Clerk of United States District Court for the District of Columbia, 333 Constitution Ave., NW, Washington, D.C. 20001.

I. SUCCESSIVE CLAIMS

Pursuant to the Prison Litigation Reform Act of 1995, unless a prisoner claims to be in "imminent danger of serious physical injury," he or she may not file a civil action or pursue a civil appeal *in forma pauperis* "if the prisoner has, on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or they failed to state a claim upon which relief could be granted."

II. PREVIOUS LAWSUITS

- A. Have you begun other lawsuits in state or federal court dealing with the same or similar facts involved in this action? Yes () No (X)
- B. Have you begun other lawsuits in state or federal court relating to your imprisonment? Yes () No (X)
- C. If your answer to A or B is Yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit.

Plaintiffs: NONE

Defendants: NONE

2. Court (if federal court, name the district; if state court, name the county)
NONE

3. Docket number NONE

4. Name of judge to whom case was assigned: NONE

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?) NONE
6. Approximate date of filing lawsuit: NONE
7. Approximate date of disposition: NONE

III. PLACE OF CONFINEMENT

F.C.I. PEKIN, ILLINOIS

- A. Is there a prisoner grievance procedure in this institution? Yes (X) No ()
If your answer is Yes, go to Question III B. If your answer is No, skip Question III B, C and D and go to Question III E.

- B. Did you present the facts relating to your complaint in the prisoner grievance procedure?
Yes (X) No ()

- C. If your answer is Yes to Question III B;

1. To whom and when did you complain? SEE EXHIBIT
2. Did you complain in writing? (Furnish copy of the complaint you made, if you have one.) Yes (X) No () (SEE EXHIBIT)
3. What, if any, response did you receive? (Furnish copy of response, if in writing.) SEE EXHIBIT
4. What happened as a result of your complaint? SEE EXHIBIT

- D. If your answer is No to Question III B, explain why not. N/A

- E. If there is no prison grievance procedure in the institution, did you complain to prison authorities? Yes () No ()

- F. If your answer is Yes to Question III E;

1. To whom and when did you complain? _____
2. Did you complain in writing? (Furnish copy of the complaint you made, if you have one.) _____
3. What, if any, response did you receive? (Furnish copy of response if in writing) _____
4. What happened as a result of your complaint? _____

IV. PARTIES

In item A below, place your name and prison number in the first blank and your present address in the second blank. Do the same for additional plaintiffs, if any.

A. Name of Plaintiff: Derrick Griffin 00649-164
Address: Box 5000, Pekin, Illinois 61555

In item B below, place the full name of the defendant(s) in the first blank, their official position in the second blank, their place of employment in the third blank and their address in the fourth blank. Do the same for additional defendants, if any.

B. Defendant: John Ashcroft is employed as
United States Att.General at Att.Gen.Office
Address: 950 Pennsylvania Ave. N.W. Rm.4400
Washington, D.C. 20530

Defendant: Kathleen H. Sawyer is employed as
Director of B.O.P. at _____
Address: 320 First St. N.W
Washington, D.C. 20534

Defendant: B.G. Compton is employed as
Warden at F.C.I. Pekin
Address: Box 7000..Pekin, Illinois

Defendant: Ralph Miller is employed
as Unit Manager at F.C.I. Pekin
Address: Box 7000..Pekin, Illinois

V. STATEMENT OF CLAIM

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include the names of other persons involved, dates and places. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra sheets if necessary.

SEE MEMORANDUM IN SUPPORT
OF PETITION

VI. RELIEF

State briefly exactly what you want the Court to do for you.

SEE MEMORANDUM IN SUPPORT
OF PETITION

Signed this 22 day of October, 2001.

Derrick Giff 00649-164
(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct.

10-22-01
(Date)

Derrick Giff 00649-164
(Signature of Plaintiff)

FILED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEB 21 2002

~~REMOVED FROM THE CLERK
OF THE DISTRICT COURT~~

Derrick Griffin
Petitioner/Plaintiff

Civil No. _____

v

B.O.P.
Defendant

MEMORANDUM IN SUPPORT OF PETITIONER IN PURSUANT
OF 42 U.S.C. SECTION 1983, and 5 U.S.C. SECTION 552a

Comes now, Derrick Griffin, pro/se, (hereinafter Petitioner) by and through himself, in the above entitled cause, submits this memorandum in support of this petition, in pursuant of 42 U.S.C. section 1983, and 5 U.S.C. section 552a, to this Honorable Court for review and relief.

PARTIES

The Petitioner, Derrick Griffin, a prisoner confined in federal custody, in the District of Illinois, who is currently serving a sentence at F.C.I. Pekin, Illinois. The Respondent[s], who is John Ashcroft, the United States Attorney General; Kathleen Hawk Sawyer, the Director of the Bureau of Prisons; B.G. Compton, the of F.C.I. Pekin, and Ralph Miller, the Unit Manager at F.C.I. Pekin. All four (4) are Respondent's, and Officials of the Bureau of Prisons, (hereinafter B.O.P.), of the United States Department

of Justice, inwhich they are represented by the United States Attorney General.

STATEMENT OF THE FACTS

Petitioner was convicted after a guilty plea on October 26, 1993, to serve 300 months. Petitioner was convicted on two (2) counts of a 19 count indictment. Count two (2), 18 U.S.C.section 1962(c), and Count eight (8), 18 U.S.C.section 371, respectfully. Petitioner is confined under color of this judgment by the United States District Court for the Northern District of Illinois, in the case of U.S. v Griffin, 92 CR 166. The Respondents, Mr.Ashcroft, Ms.Sawyer, Mr.Compton, and Mr.Miller has taken the position that Petitioner should be held accountable for two dismissed charges. Petitioner asserts that once he became aware of the course of action the B.O.P. was taking, Petitioner started these proceeding, inwhich Petitioner has exhausted his administrative remedies on these issues.

PRELIMINARY ARGUMENT.A.

Petitioner asserts that he will show that the B.O.P. intentionally or willfully violated the Privacy Act, as well as his Constitutional rights. Petitioner will also demonstrate that the B.O.P. did in fact make decisions based on incorrect information contained within his P.S.I., inwhich those decisions in fact did cause an adverse determination toward Petitioner. Finally, Petitioner understand that he must demonstrate to this Court that there is a genuine issue, as well as meet a four-prong test, inwhich he will meet.

ARGUMENT. B.

Petitioner asserts that the United States Constitution protects everyone from double jeopardy, and double punishment, as well as double prosecution. The Fifth Amendment to the U.S.Const. Petitioner asserts that the B.O.P. feels it has the authority and jurisdiction to double punish prisoners, whereas, Petitioner has been held accountable for charges that were dismissed in a Court of law. Petitioner asserts that policy dictates all decisions within the B.O.P. whereas, Petitioner asserts that 4-3-01, he was scheduled for a team meeting, and at that meeting, Petitioner asked Mr.Miller, (Unit Manager) when would his points drop? Mr.Miller, half looking at Petitioners P.S.I., stated that he don't see how Petitioner points could decrease, because Petitioner was convicted of murder, as well as convicted of having other individuals beaten, and because of those acts, Petitioners greatest severity seven (7) points would remain the same. Petitioner informed Mr.Miller, that the P.S.I. was uncorrected, that those charges had been dismissed. Petitioner asserts that after a lengthy conversation at that team, Petitioner stated that those charges should not even be part of the record, or being used against Petitioner. Mr.Miller stated, "just send me (Miller) a cop-out," to remind him to re-read my P.S.I., because its to thick for him to read at that moment. Mr.Miller also stated that if he determines that those charges in fact had been dismissed, my points would drop considerably. see exhibit. Petitioner asserts that because the B.O.P. has used those dismissed charges, Petitioner has

12 points, whereas, Petitioner would only have five (5) points, if the B.O.P. did not use those dismissed charges.

Petitioner asserts that Mr. Miller should have read Petitioners files before Petitioner had his team, in which Mr. Miller would have had the opportunity to address those issues professionally, whereas, if Mr. Miller was in doubt concerning the issues about those dismissed charges, he should have contacted the author of the P.S.I., in which is the Probation Officer.

Petitioner asserts that the B.O.P. has failed to address or respond to the issue of the dismissed murder. However, in retort have taken a position that is expressly separate in its statement; "Petitioner was convicted of having individuals beaten." see exhibit. Petitioner asserts that this additional charge was also dismissed, in which Petitioner should not have any further burden or responsibilities pertaining to any dismissed charges. The Court now standing, duly enlightened to the fact that the B.O.P. has attempted to anchor its findings once again on dismissed charges. A finding of a violation of Petitioners Fifth Amendment Rights, which clearly states that "no person shall be held or put in jeopardy twice, in which such will constitute as double jeopardy, double prosecution, as well as double punishment." (emphasis added). Petitioner ask this Honorable Court to define double punishment and double jeopardy.

Petitioner asserts that by the B.O.P. using these dismissed charges, the B.O.P. has placed Petitioner in the Greatest category, Petitioner asserts that he should have only five (5) point, and

there are no existing factors in its Policy Statements to suggest that Petitioners offense should be placed in this category, inwhich seven (7) additional points have burdened upon the Petitioner.

Petitioner asserts that his Fifth Amendment due process to the United States Constitution has been violated. The B.O.P. has used two (2) dismissed charges to hinder Petitioners opportunity, he was aggrieved by an adverse determination when the unit team prepared and rendered its decision concerning Petitioners points, inwhich it amounted to an adverse determination regarding the severity of his offense behavior. As stated in Laningham v U.S.Navy, 813 F.2d 1236, quoting;

"The violation must be so patently egreious and unlawful, that anyone undertaking the conduct should have known it unlawful." (emphasis added).

Petitioner asserts that by the B.O.P. making a determination, that in turn has caused an adverse determination, and in turn is binding, which is deemed an adverse determination, one that affected his rights, benefits, entitlements or opportunities. Petitioner asserts that the B.O.P. has used an erroneour presentence report to make determinations adverse to him, inwhich is a violation of 5 U.S.C. section 552a(e)(5), (g)(1)(c) and (g)(4) of the Act. See Perry v F.B.I., 759 F.2d 1275, where the Court has defined determination, quoting;

"The legislative history indictes that the word 'determination' in section (e)(5) 'means any decision affecting the individual' which is in whole or in part, based on

information contained in the record and which is made by any person or any agency." (emphasis added).

Petitioner asserts that the B.O.P. claims that policy statement 5100.07, chapter 8, page 3, and section 2, gives them the authority to use dismissed charges against prisoners, inwhich Petitioner disagreed. See exhibit. See Sellers v B.O.P., 959 F.2d 307, quoting;

"....the B.O.P. could not use a dismissed 1979 bank robbery against defendant....because that is unconstitutional...." (emphasis added).

Petitioner asserts that the policy statement that the B.O.P. has cited, does not express nor is there any language that one could interpret or construe that the B.O.P. could use dismissed charges against prisoners; for to allow such action must be considered double jeopardy, and double punishment, whereas that in itself do violates Petitioners Fifth Amendment of the United States Constitution, inwhich it embraces due process of the law, contrary to the B.O.P. finding "that Petitioners Fifth Amendment rights, and procedural safeguards has not been violated." see exhibit. Petitioner asserts that this line of action that the B.O.P. has taken is unconstitutional, and is a violation of the Privacy Act, and the United States Constitution. Petitioner asserts that the B.O.P. should have taken steps to verify this information, before rendering its decision. See Sellers, supra, also see White v Office of Personal Management, 787 F.2d 660, where the Court held, quoting;

"....as long as the information contained in an agency's

file is capable of being verified, then under (e)(5) and (g)(1)(c) of the Act, the agency must take reasonable steps to maintain the accuracy of the information to assure fairness to the individual. If the agency willfully or intentionally fails to maintain its records in that way, and as a result, it makes a determination adverse to an individual, than it will be liable to that person for money damages." (emphasis added).

Petitioner asserts that after he failed to receive any favorable response from Mr. Miller through (1) conversation, (2) an inmate request form, and (3) an B.P.8, Petitioner filed an B.P.9 to the Warden, Mr. Compton, inwhich Petitioner once again expressed that his P.S.I. contained inaccuracy information. Mr. Compton first conceded the fact that no individual should have to answer to dismissed charges, nor be punished a second time for the same charge. Petitioner asserts that from Mr. Compton response in his B.P.9, Mr. Compton must not understood the language from the Fifth Amendment, or 5 U.S.C. section 552a(e)(5), inwhich it provides that, quoting;

"....each agency that keeps a system of record must maintain all records....with such accuracy, relevance, timeliness, and completeness as is reasonable necessary to assure fairness to the individual...."(emphasis added).

5 U.S.C. section 552a(e)(5).

Petitioner asserts that the B.O.P. violated the accuracy provisions of the Privacy Act codified at 5 U.S.C. section 552a(e)(5).

The B.O.P. condoned and ratified the actions of Mr. Miller and Mr. Compton, by refusing to investigate to see if the information within these files are correct. Petitioner asserts that by the B.O.P. making such adverse determination, those decisions hampered Petitioner from transferring, 5 U.S.C. section 552a(g)(1)(c), which provides, quoting;

"....whenever any agency fails to maintain records in such manner as to assure 'fairness in any determination' relating to the qualifications, characters, rights or opportunities of, or benefits to the individual that may be made on the basis of such record...."(emphasis added).

Petitioner asserts that he has exhausted his administrative remedies unsuccessfully. See exhibit. Petitioner asserts that the B.O.P. has acted unprofessional in this matter, that the B.O.P. did not take steps to verify the information contained in those files to see if they are/were correct or not. Petitioner asserts that by the B.O.P. refusing to investigate these issues, but instead stated policy dictates, that the Court must determine and construe that the B.O.P. has intentionally or willfully caused these adverse determinations toward Petitioner. See Albright v U.S., 732 F.2d 181, 189, quoting;

"An agency acts in an intentional or willful manner 'either by committing the act without grounds for believing it to be lawful or by flagrantly disregarding others' rights under the Act.'" (emphasis added).

ARGUMENT. C.

Petitioner asserts that a individual need not show that he/she

has suffered some form of disability or lost income, to collect damages under the Privacy Act. See Sellers supra, also see Kay v F.C.C. 976 F.Supp 17, where the Court has established a four-prong test that must be satisfied, in order to advance in a claim, these four prongs are, quoting;

1. There was adverse determination;
2. The B.O.P. failed to maintain his records with the degree of accuracy necessary to assure fairness in the determination;
3. The B.O.P. reliance on the inaccurate records was the proximate cause of the adverse determination, and
4. The B.O.P. acted intentionally or willfully in failing to maintain accurate records. (emphasis added). id at 976 F.Supp 17.

Petitioner asserts that this Honorable Court must determine that the B.O.P. has violated his due process rights of the law, the Fifth Amendment to the United States Constitution, and 5 U.S.C. section 552a(e)(5), (g)(1)(c), and (g)(4) of the Act. Petitioner submits the following four (4) issues to demonstrate that the B.O.P. has in fact committed these violations.

1. On 4-3-01, the B.O.P. determined that Petitioners points should be 12, because of information contained in his P.S.I.;
2. On 6-14-01, the B.O.P. stated that policy dictates that ~~evidence in Petitioners P.S.I.~~ shows that Petitioner

committed these acts. Petitioner has filed an B.P.8,9
10 and 11, concerning this issue, but the B.O.P. has
failed to correct these files;

3. On 4-3-01, the B.O.P. used two (2) dismissed charges
against Petitioner, this cause of action has hindered
Petitioner from transferring, quarters, job, earning
money, and good time, and
4. After Petitioner has demonstrated to the B.O.P. that
under the Fifth Amendment to the United States Consti-
tution, and 5 U.S.C.section 552a(e)(5), the B.O.P.
could not relie on certain information within his P.S.I.
inwhich that information is not correct, but is being
used to make determinations toward Petitioner, the B.O.P.
has not taken steps to verify such information to see
if its correct or not, but on the contrary, has
intentionally or willfully made determinations adversely
affecting Petitioner.

Petitioner asserts that under 5 U.S.C.section 552a(g)(4), the
Act provides civil remedies for violation of section (e)(5). In
particular section (g)(1)(c), permits a civil action if an agency
'fails to maintain records concerning any individual....and conse-
quently a determination is made, which is adverse to that individual.
(emphasis added). Petitioner asserts that by the B.O.P. failure to
correct his files, inwhich this failure in fact was the cause and
subject for him to be placed in double jeopardy, as well as double

punishment; and knowing that such violation goes against the laws of the United States Constitution, the Fifth Amendment, which embraces due process of the law, then the B.O.P. has intentionally or willfully violated 5 U.S.C. section 552a(e)(5), (g)(1)(c) and (g)(4). Petitioner asserts that he has established intentional or willful. Petitioner asserts that the action and position that the B.O.P. has taken is against the same United States Constitution that all Federal Courts, and the United States Supreme Court look to for guidance in certain situations. Petitioner asserts that the B.O.P. is willing to create, but not correct. The B.O.P. has stated that Petitioner's P.S.I. contains evidence that Petitioner committed those crimes, and because of such, the B.O.P. will punish Petitioner for those acts, whereas, those same charges that the B.O.P. has alluded to were dismissed in the United States District Court for the Northern District of Illinois, in the case U.S. v Griffin, 92 CR 166, and the record will show such.

Petitioner asserts that as a result of the B.O.P. unprofessional conduct, using that erroneous presentence report adversely affected determinations by the B.O.P. regarding custody and security classification, job, quarters, transfer and the opportunity to earn money, and good time, is a violation of his due process to the United States Constitution, and the Privacy Act. Petitioner is entitled to having his P.S.I. corrected, money damages, litigation costs, and attorney fees. Petitioner asserts that the B.O.P. has not taken steps to maintain or correct these errors, but on the contrary, the

B.O.P. has taken the position that they have the authority under policy statement 5100.07, chapter 8, page 3, and section 2, to use dismissed charges in the capacity they choose. See exhibit. Petitioner is authorized under 5 U.S.C. section 552a(g)(1)(c) and (g)(4) to file a 150,000 (one hundred, fifth thousand) dollar law suit against the B.O.P. for their actions, and failure for not maintaining accurate files. Petitioner ask this Honorable Court to order the B.O.P. to correct his files, so that all languages concerning those dismissed charges could no longer be used in aid in making determinations toward Petitioner, or the Court should order that the information be expunged from Petitioners files, because if this incorrect information remains as it is, Petitioner will continue having decisions made concerning it. As stated in Szymanski v U.S. Parole Com'n., 870 F.Supp at 554, the Court stated, quoting;

"Federal Courts have the equitable power 'to order the expungement of Government records' where necessary to vindicate rights secured by the Constitution or by statute."
(emphasis added).

CONCLUSION

Petitioner asserts that he has been deprived of his due process protection under the Fifth Amendment to the United States Constitution, and that he has met the four-prong test under Kay supra; that he also has presented an colorable claim. Petitioner asserts that the Court has clearly expressed their views on issues such as the case at bar. As stated in Doe v U.S., 821 F.2d at 699, quoting;

"In the typical Privacy Act case, as the District Court observed, it is feasible, necessary, and proper for the agency, and in turn, the District Court to determine whether each file item of information is accurate....the Act was designed to create 'a code of fair information practices' to govern 'federal agencies that collect, store, and disseminate personal information about individual' Smiercke v U.S. Dept. of Treasury, 477 F.Supp 221, 224. An agency, we think it plain dishonors the Privacy Act standard of 'accuracy....necessary to assure fairness' if it collects and keeps without careful investigation derogatory information from unreliable sources, or of a kind that could be run to earth with a reasonable degree of certainty. An agency will not have 'done what is reasonable in assuring the accuracy of its information,' Edison v Dept. of the Army, 672 F.2d 840, 843, if it squirrels away deliberately, or out of bureaucratic habit, unsubstantiated rumors, McCarthyesque innuendo, unchecked reports of dubious informers, or prying neighbors. See H. R. Rep. No.93-1416, 93d Cong., 2d Sess 4-5 (1974). (emphasis added).

Petitioner only prays that this Honorable Court grants this motion, and order the B.O.P. to correct the errors in his files.

Whereas, this Honorable Court will order its judgment where and how it deems appropriate.

Derrick Griffin 00649-164
Derrick Griffin, 00649-164

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Derrick Griffin
Petitioner/Plaintiff

Civil No. _____

v.

B.O.P.
Defendant

MEMORANDUM IN SUPPORT OF PETITIONER IN PURSUANT
OF 42 U.S.C. SECTION 1983, and 5 U.S.C. SECTION 552a

Comes now, Derrick Griffin, pro/se, (hereinafter Petitioner) by and through himself, in the above entitled cause, submits this memorandum in support of this petition, in pursuant of 42 U.S.C. section 1983, and 5 U.S.C. section 552a, to this Honorable Court for review and relief.

PARTIES

The Petitioner, Derrick Griffin, a prisoner confined in federal custody, in the District of Illinois, who is currently serving a sentence at F.C.I. Pekin, Illinois. The Respondent[s], who is John Ashcroft, the United States Attorney General; Kathleen Hawk Sawyer, the Director of the Bureau of Prisons; B.G. Compton, the of F.C.I. Pekin, and Ralph Miller, the Unit Manager at F.C.I. Pekin. All four (4) are Respondent's, and Officials of the Bureau of Prisons, (hereinafter B.O.P.), of the United States Department

of Justice, inwhich they are represented by the United States Attorney General.

STATEMENT OF THE FACTS

Petitioner was convicted after a guilty plea on October 26, 1993, to serve 300 months. Petitioner was convicted on two (2) counts of a 19 count indictment. Count two (2), 18 U.S.C.section 1962(c), and Count eight (8), 18 U.S.C.section 371, respectfully. Petitioner is confined under color of this judgment by the United States District Court for the Northern District of Illinois, in the case of U.S. v Griffin, 92 CR 166. The Respondents, Mr.Ashcroft, Ms.Sawyer, Mr.Compton, and Mr.Miller has taken the position that Petitioner should be held accountable for two dismissed charges. Petitioner asserts that once he became aware of the course of action the B.O.P. was taking, Petitioner started these proceeding, inwhich Petitioner has exhausted his administrative remedies on these issues.

PRELIMINARY ARGUMENT.A.

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ARGUMENT. B.

Petitioner asserts that the United States Constitution protects everyone from double jeopardy, and double punishment, as well as double prosecution. The Fifth Amendment to the U.S.Const. Petitioner asserts that the B.O.P. feels it has the authority and jurisdiction to double punish prisoners, whereas, Petitioner has been held accountable for charges that were dismissed in a Court of law. Petitioner asserts that policy dictates all decisions within the B.O.P. whereas, Petitioner asserts that 4-3-01, he was scheduled for a team meeting, and at that meeting, Petitioner asked Mr.Miller, (Unit Manager) when would his points drop? Mr.Miller, half looking at Petitioner's P.S.I., stated that he don't see how Petitioner's points could decrease, because Petitioner was convicted of murder, as well as convicted of having other individuals beaten, and because of those acts, Petitioner's greatest severity seven (7) points would remain the same. Petitioner informed Mr.Miller, that the P.S.I. was incorrect, that those charges had been dismissed. Petitioner asserts that after a lengthy conversation at that team, Petitioner stated that those charges should not even be part of the record, or being used against Petitioner. Mr.Miller stated, "just send me (Miller) a cop-out," to remind him to re-read my P.S.I., because it's too thick for him to read at that moment. Mr.Miller also stated that if he determines that those charges in fact had been dismissed, my points would drop considerably. see exhibit. Petitioner asserts that because the B.O.P. has used those dismissed charges, Petitioner has

12 points, whereas, Petitioner would only have five (5) points, if the B.O.P. did not use those dismissed charges.

Petitioner asserts that Mr. Miller should have read Petitioner's files before Petitioner had his team, in which Mr. Miller would have had the opportunity to address those issues professionally, whereas, if Mr. Miller was in doubt concerning the issues about those dismissed charges, he should have contacted the author of the P.S.I., in which is the Probation Officer.

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Petitioner asserts that by the B.O.P. using these dismissed charges, the B.O.P. has placed Petitioner in the Greatest category, Petitioner asserts that he should have only five (5) points, and

there are no existing factors in its Policy Statements to suggest that Petitioners offense should be placed in this category, inwhich seven (7) additional points have burdened upon the Petitioner.

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"The violation must be so patently egreious and unlawful, that anyone undertaking the conduct should have known it unlawful." (emphasis added).

Petitioner asserts that by the B.O.P. making a determination, that in turn has caused an adverse determination, and in turn is binding, which is deemed an adverse determination, one that affected his rights, benefits, entitlements or opportunities. Petitioner asserts that the B.O.P. has used an erroneour presentence report to make determinations adverse to him, inwhich is a violation of 5 U.S.C. section 552a(e)(5), (g)(1)(c) and (g)(4) of the Act. See Perry v F.B.I., 759 F.2d 1275, where the Court has defined determination, quoting;

"The legislative history indictes that the word 'determination' in section (e)(5) 'means any decision affecting the individual' which is in whole or in part, based on

information contained in the record and which is made by any person or any agency." (emphasis added).

Petitioner asserts that the B.O.P. claims that policy statement 5100.07, chapter 8, page 3, and section 2, gives them the authority to use dismissed charges against prisoners, inwhich Petitioner disagreed. See exhibit. See Sellers v B.O.P., 959 F.2d 307, quoting;

"....the B.O.P. could not use a dismissed 1979 bank robbery against defendant....because that is unconstitutional...." (emphasis added).

Petitioner asserts that the policy statement that the B.O.P. has cited, does not express nor is there any language that one could interpret or construe that the B.O.P. could use dismissed charges against prisoners; for to allow such action must be considered double jeopardy, and double punishment, whereas that in itself do violates Petitioners Fifth Amendment of the United States Constitution, inwhich it embraces due process of the law, contrary to the B.O.P. finding "that Petitioners Fifth Amendment rights, and procedural safeguards has not been violated." see exhibit. Petitioner asserts that this line of action that the B.O.P. has taken is unconstitutional, and is a violation of the Privacy Act, and the United States Constitution. Petitioner asserts that the B.O.P. should have taken steps to verify this information, before rendering its decision. See Sellers, supra, also see White v Office of Personal Management, 787 F.2d 660, where the Court held, quoting;

"....as long as the information contained in an agencys

file is capable of being verified, then under (e)(5) and (g)(1)(c) of the Act, the agency must take reasonable steps to maintain the accuracy of the information to assure fairness to the individual. If the agency willfully or intentionally fails to maintain its records in that way, and as a result, it makes a determination adverse to an individual, then it will be liable to that person for money damages." (emphasis added).

Petitioner asserts that after he failed to receive any favorable response from Mr. Miller through (1) conversation, (2) an inmate request form, and (3) an B.P.8, Petitioner filed an B.P.9 to the Warden, Mr. Compton, in which Petitioner once again expressed that his P.S.I. contained inaccuracy information. Mr. Compton first conceded the fact that no individual should have to answer to dismissed charges, nor be punished a second time for the same charge. Petitioner asserts that from Mr. Compton response in his B.P.9, Mr. Compton must not understood the language from the Fifth Amendment, or 5 U.S.C. section 552a(e)(5), in which it provides that, quoting;

"....each agency that keeps a system of record must maintain all records....with such accuracy, relevance, timeliness, and completeness as is reasonable necessary to assure fairness to the individual...."(emphasis added).

5 U.S.C. section 552a(e)(5).

Petitioner asserts that the B.O.P. violated the accuracy provisions of the Privacy Act codified at 5 U.S.C. section 552a(e)(5).

The B.O.P. condoned and ratified the actions of Mr. Miller and Mr. Compton, by refusing to investigate to see if the information within these files are correct. Petitioner asserts that by the B.O.P. making such adverse determination, those decisions hampered Petitioner from transferring, 5 U.S.C. section 552a(g)(1)(c), which provides, quoting;

"....whenever any agency fails to maintain records in such manner as to assure 'fairness in any determination' relating to the qualifications, characters, rights or opportunities of, or benefits to the individual that may be made on the basis of such record...."(emphasis added).

Petitioner asserts that he has exhausted his administrative remedies unsuccessfully. See exhibit. Petitioner asserts that the B.O.P. has acted unprofessional in this matter, that the B.O.P. did not take steps to verify the information contained in those files to see if they are/were correct or not. Petitioner asserts that by the B.O.P. refusing to investigate these issues, but instead stated policy dictates, than the Court must determine and construe that the B.O.P. has intentionally or willfully caused these adverse determinations toward Petitioner. See Albright v U.S., 732 F.2d 181, 189, quoting;

"An agency acts in an intentional or willful manner 'either by committing the act without grounds for believing it to be lawful or by flagrantly disregarding others' rights under the Act." (emphasis added).

ARGUMENT. C.

Petitioner asserts that a individual need not show that he/she

has suffered some form of disability or lost income, to collect damages under the Privacy Act. See Sellers supra, also see Kay v F.C.C. 976 F.Supp 17, where the Court has established a four-prong test that must be satisfied, in order to advance in a claim, these four prongs are, quoting;

1. There was adverse determination;
2. The B.O.P. failed to maintain his records with the degree of accuracy necessary to assure fairness in the determination;
3. The B.O.P. reliance on the inaccurate records was the proximate cause of the adverse determination, and
4. The B.O.P. acted intentionally or willfully in failing to maintain accurate records. (emphasis added). *id* at 976 F.Supp 17.

Petitioner asserts that this Honorable Court must determine that the B.O.P. has violated his due process rights of the law, the Fifth Amendment to the United States Constitution, and 5 U.S.C. section 552a(e)(5), (g)(1)(c), and (g)(4) of the Act. Petitioner submits the following four (4) issues to demonstrate that the B.O.P. has in fact committed these violations.

1. On 4-3-01, the B.O.P. determined that Petitioners points should be 12, because of information contained in his P.S.I.;
2. On 6-14-01, the B.O.P. stated that policy dictates that evidence in Petitioners P.S.I. shows that Petitioner

committed these acts. Petitioner has filed an B.P.8,9 10 and 11, concerning this issue, but the B.O.P. has failed to correct these files;

3. On 4-3-01, the B.O.P. used two (2) dismissed charges against Petitioner, this cause of action has hindered Petitioner from transferring, quarters, job, earning money, and good time, and
4. After Petitioner has demonstrated to the B.O.P. that under the Fifth Amendment to the United States Constitution, and 5 U.S.C.section 552a(e)(5), the B.O.P. could not rely on certain information within his P.S.I. inwhich that information is not correct, but is being used to make determinations toward Petitioner, the B.O.P. has not taken steps to verify such information to see if its correct or not, but on the contrary, has intentionally or willfully made determinations adversely affecting Petitioner.

Petitioner asserts that under 5 U.S.C.section 552a(g)(4), the Act provides civil remedies for violation of section (e)(5). In particular section (g)(1)(c), permits a civil action if an agency 'fails to maintain records concerning any individual....and consequently a determination is made, which is adverse to that individual. (emphasis added). Petitioner asserts that by the B.O.P. failure to correct his files, inwhich this failure in fact was the cause and subject for him to be placed in double jeopardy, as well as double

punishment; and knowing that such violation goes against the laws of the United States Constitution, the Fifth Amendment, which embraces due process of the law, then the B.O.P. has intentionally or willfully violated 5 U.S.C. section 552a(e)(5), (g)(1)(c) and (g)(4). Petitioner asserts that he has established intentional or willful. Petitioner asserts that the action and position that the B.O.P. has taken is against the same United States Constitution that all Federal Courts, and the United States Supreme Court look to for guidance in certain situations. Petitioner asserts that the B.O.P. is willing to create, but not correct. The B.O.P. has stated that Petitioner's P.S.I. contains evidence that Petitioner committed those crimes, and because of such, the B.O.P. will punish Petitioner for those acts, whereas, those same charges that the B.O.P. has alluded to were dismissed in the United States District Court for the Northern District of Illinois, in the case U.S. v Griffin, 92 CR 166, and the record will show such.

Petitioner asserts that as a result of the B.O.P. unprofessional conduct, using that erroneous presentence report adversely affected determinations by the B.O.P. regarding custody and security classification, job, quarters, transfer and the opportunity to earn money, and good time, is a violation of his due process to the United States Constitution, and the Privacy Act. Petitioner is entitled to having his P.S.I. corrected, money damages, litigation costs, and attorney fees. Petitioner asserts that the B.O.P. has not taken steps to maintain or correct these errors, but on the contrary, the

B.O.P. has taken the position that they have the authority under policy statement 5100.07, chapter 8, page 3, and section 2, to use dismissed charges in the capacity they choose. See exhibit. Petitioner is authorized under 5 U.S.C. section 552a(g)(1)(c) and (g)(4) to file a 150,000 (one hundred, fifth thousand) dollar law suit against the B.O.P. for their actions, and failure for not maintaining accurate files. Petitioner ask this Honorable Court to order the B.O.P. to correct his files, so that all languages concerning those dismissed charges could no longer be used in aid in making determinations toward Petitioner, or the Court should order that the information be expunged from Petitioners files, because if this incorrect information remains as it is, Petitioner will continue having decisions made concerning it. As stated in Szymanski v U.S. Parole Com'n., 870 F.Supp at 554, the Court stated, quoting;

"Federal Courts have the equitable power 'to order the expungement of Government records' where necessary to vindicate rights secured by the Constitution or by statute."
(emphasis added).

CONCLUSION

Petitioner asserts that he has been deprived of his due process protection under the Fifth Amendment to the United States Constitution, and that he has met the four-prong test under Kay supra; that he also has presented an colorable claim. Petitioner asserts that the Court has clearly expressed their views on issues such as the case at bar. As stated in Doe v U.S., 821 F.2d at 699, quoting;

"In the typical Privacy Act case, as the District Court observed, it is feasible, necessary, and proper for the agency, and in turn, the District Court to determine whether each file item of information is accurate....the Act was designed to create 'a code of fair information practices' to govern 'federal agencies that collect, store, and disseminate personal information about individual'

Smiertke v U.S. Dept. of Treasury, 477 F.Supp 221, 224. An

agency, we think it plain dishonors the Privacy Act standard of 'accuracy....necessary to assure fairness' if it collects and keeps without careful investigation derogatory information from unreliable sources, or of a kind that could be run to earth with a reasonable degree of certainty. An agency will not have 'done what is reasonable in assuring the accuracy of its information,'

Edison v Dept. of the Army, 672 F.2d 840, 843, if it squirrels away deliberately, or out of bureaucratic habit, unsubstantiated rumors, McCarthyyesque innuendo, unchecked reports of dubious informers, or prying neighbors. See H. R. Rep. No.93-1416, 93d Cong., 2d Sess 4-5 (1974).

(emphasis added).

Petitioner only prays that this Honorable Court grants this motion, and order the B.O.P. to correct the errors in his files.

Whereas, this Honorable Court will order its judgment where and how it deems appropriate.

Derrick Griffin 00649-164
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